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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,174	09/30/2003	Paul Anthony Rhea	60046.0024US01	5913

7590  
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04/17/2007

EXAMINER

BONURA, TIMOTHY M

ART UNIT

PAPER NUMBER

2114

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/675,174	RHEA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tim Bonura	2114	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

- **Claims 1- 20 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Keys, et al, 6,516,427.**

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Keys, et al, 6,516,427.
3. Regarding claim 1:
  - a. Regarding the limitation of "utilizing server-side entry points in providing diagnostics on-demand," Keys disclose a system that can issue a request of diagnostic assistance upon detection of a failure. (Lines 30-36 of Column 4).
  - b. Regarding the limitation of "receiving a request to perform a diagnostic on a client computer," Keys disclose a system receives the request (see step 58 in figure 2b) at the interactive diagnostic procedure. (Lines 41-45 of Column 4).
  - c. Regarding the limitation of "in response to the request, calling an entry point provided at a server computer for performing functions related to executing a diagnostic, the called entry point operative to provide a configuration file identifying to the client computer one or more additional entry points at the server computer," Keys disclose a system in which a JBM diagnostic subroutine is dispatched and executed. The

subroutine diagnostic routine is a JVM implemented routine that relies upon the systems Java language to run. (Lines 61-67 of Column 4, and Lines 1-5 and 19-21 of Column 5). Keyes discloses a system with means for the configuration being provided to the client system. (Lines 7-10 of Column 5).

d. Regarding the limitation of "calling a one of the entry points identified in the configuration file to obtain authorization to download a diagnostics module for testing a single hardware component of the client computer," Keys disclose a system in which the HTTP client service can be requested to send more sub-diagnostic routines upon completion of the interactive diagnostic procedure. (Lines 1-15 of Column 5).

e. Regarding the limitation of "in response to receiving the authorization to download the diagnostics module, calling a one of the entry points identified in the configuration file to download the diagnostics module; installing the diagnostics module once it has been downloaded," Keys disclose a system a JVM implementable diagnostic device that can be downloaded and run on a computer system. (Lines 15-20 of Column 5).

4. Regarding claim 2, Keyes discloses a system in which the interactive diagnostic procedure responds to a request by dispatching a message to the JVM to run a diagnostic subroutine and executing the subroutine. (Lines 41-46 of Column 4).

5. Regarding claim 3, Keyes discloses a system wherein the diagnostic procedure either cause a download of another diagnostic subroutine or outputs a message indicating the problem upon completion of its routine. (Lines 5-15 of Column 5).

6. Regarding claim 4, Keyes discloses a system wherein the diagnostic procedure either cause a download of another diagnostic subroutine or outputs a message indicating the problem upon completion of its routine. (Lines 5-15 of Column 5).

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7. Regarding claim 5, Keyes discloses a system wherein the JVM is able to install the diagnostic routine on any computer because of the platform independence of the JAVA language. Thereby, the JAVA language provides the means for installing the subroutine for diagnostic. (Lines 15-22 of Column 5).
8. Regarding claim 6, Keyes discloses a system with a computer-implemented device, which is performing executable diagnostic server function that must inherently be stored on a type of computer storage medium. (Lines 8-18 of Column 4).
9. Regarding claim 7, Keyes discloses a system that is a computer-implemented device. (Lines 8-18 of Column 4).
10. Regarding claim 8, Keys disclose a system receives the request (see step 58 in figure 2b) at the interactive diagnostic procedure. (Lines 41-45 of Column 4). Keys disclose a system a JVM implementable diagnostic device that can be downloaded and run on a computer system. (Lines 15-20 of Column 5). Keyes discloses a system with means for the configuration being provided to the client system. (Lines 7-10 of Column 5).
11. Regarding claim 9, Keyes discloses a system wherein the JVM is able to install the diagnostic routine on any computer because of the platform independence of the JAVA language. Thereby, the JAVA language provides the means for installing the subroutine for diagnostic. (Lines 15-22 of Column 5).
12. Regarding claim 10, Keys disclose a system a JVM implementable diagnostic device that can be downloaded and run on a computer system. (Lines 15-20 of Column 5).
13. Regarding claim 11, Keyes discloses a system with HTTP connections for transmitting the data. It is inherent that HTTP messages have network addresses.

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14. Regarding claim 12, Keyes discloses a system in which a HTTP message is sent to an RDD (which is a network computer device) to send a diagnostic routine. (Lines 8-18 and 41-48 of Column 4).

15. Regarding claim 13, Keyes discloses a system wherein the diagnostic procedure either cause a download of another diagnostic subroutine or outputs a message indicating the problem upon completion of its routine. (Lines 5-15 of Column 5).

16. Regarding claim 14, Keyes discloses a system wherein the diagnostic procedure either cause a download of another diagnostic subroutine or outputs a message indicating the problem upon completion of its routine. (Lines 5-15 of Column 5).

17. Regarding claim 15:

f. Regarding the limitation of "providing an entry point at a server computer for retrieving a configure file identifying to the client computer one or more additional entry points at the server computer for use in providing diagnostic on-demand," Keys disclose a system in which a JBM diagnostic subroutine is dispatched and executed. The subroutine diagnostic routine is a JVM implemented routine that relies upon the systems Java language to run. (Lines 61-67 of Column 4, and Lines 1-5 and 19-21 of Column 5). Keyes discloses a system with means for the configuration being provided to the client system. (Lines 7-10 of Column 5).

g. Regarding the limitation of "receiving a request at the entry point for providing the configuration file and returning the configuration file in response to the request" Keys disclose a system a JVM implementable diagnostic device that can be downloaded and run on a computer system. (Lines 15-20 of Column 5).

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18. Regarding claim 16, Keyes discloses a system in which the interactive diagnostic procedure responds to a request by dispatching a message to the JVM to run a diagnostic subroutine and executing the subroutine. (Lines 41-46 of Column 4).
19. Regarding claim 17, Keyes discloses a system wherein the diagnostic procedure either cause a download of another diagnostic subroutine or outputs a message indicating the problem upon completion of its routine. (Lines 5-15 of Column 5).
20. Regarding claim 18, Keyes discloses a system wherein the JVM is able to install the diagnostic routine on any computer because of the platform independence of the JAVA language. Thereby, the JAVA language provides the means for installing the subroutine for diagnostic. (Lines 15-22 of Column 5).
21. Regarding claim 19, Keyes discloses a system with a computer-implemented device, which is performing executable diagnostic server function that must inherently be stored on a type of computer storage medium. (Lines 8-18 of Column 4).
22. Regarding claim 20, Keyes discloses a system that is a computer-implemented device. (Lines 8-18 of Column 4).

### ***Response to Arguments***

23. Applicant's arguments, filed 01/23/2007, with respect to the 101 rejections have been fully considered and are persuasive. The rejections over 101 issues of claims 6 and 19 have been withdrawn.
24. Applicant's arguments filed 01/23/2007 have been fully considered but they are not persuasive.
25. Regarding the arguments for claim 1:

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h. In response to applicant's arguments, the recitation "a method for utilizing server-side points in providing diagnostics on-demand" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

i. Regarding the argument of Keyes failing to teach or disclose, "requesting any authorization for downloading a diagnostic subroutine" (Page 7 bottom – Page 8 top). The examiner contends that Keyes does teach authorizing a diagnostic module download when Keyes discloses by causing a download of a diagnostic subroutine. (Lines 5-8 of Column 5). The examiner contends that is a form of authorization for a download.

26. Regarding claim 2, the applicant argues that Keyes fail to teach or disclose, "calling an entry point identified in a configuration file to obtain authorization to start execution of the diagnostic subroutine." The examiner contends that Keyes does teach authorizing a diagnostic module download when Keyes discloses by causing a download of a diagnostic subroutine. (Lines 5-8 of Column 5). The examiner contends that is a form of authorization for a download.

27. Regarding the amendments to claims 1, 8 and 15, the rejections above have been amended to cover the additional claim limitation.

28. Regarding the arguments for claims 8 and 15, please refer to the reply to claim 1 argument above.



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29. Applicant's arguments with respect to claims 6 and 19 have been considered but are moot in view of the new ground(s) of rejection. The amendments for the 101 rejections have cleared the previous 101 rejections. However, the examiner has now applied 102 rejections. (See above).

### ***Conclusion***

30. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

31. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

32. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tim Bonura**.

- The examiner can normally be reached on **Mon-Fri: 8:30-5:00**.
- The examiner can be reached at: **571-272-3654**.

33. If attempts to reach the examiner by telephone are unsuccessful, please contact the examiner's supervisor, **Scott Baderman**.

- The supervisor can be reached on **571-272-3644**.

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34. The fax phone numbers for the organization where this application or proceeding is assigned are:

- **703-872-9306 for all patent related correspondence by FAX.**

35. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

36. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is: **571-272-2100**.


37. Responses should be mailed to:

- **Commissioner of Patents and Trademarks**

**P.O. Box 1450**

**Alexandria, VA 22313-1450**

tmb  
April 13, 2007

  
Gabriel Chu  
Primary Examiner-2114